



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 34638101

Date: OCT. 17, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a ceramics artist, seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with “extraordinary ability.” *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Successful petitioners for U.S. permanent residence in this category must demonstrate “sustained national or international acclaim” and extensively document recognition of their achievements in their fields. *Id.*

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner met the requested category’s initial evidentiary requirements. But, in her final merits determination, the Director ultimately found insufficient evidence of the Petitioner’s claimed extraordinary ability. On appeal, the Petitioner contends that the Director “conflated” the two steps U.S. Citizenship and Immigration Services (USCIS) uses to analyze extraordinary ability and disregarded evidence of his acclaim and recognition in his field.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we agree with the Petitioner that the Director overlooked evidence. But, because we deem the oversights harmless after reviewing the overlooked evidence, we will dismiss the appeal.

## I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that they:

- Have “extraordinary ability in the sciences, arts, education, business, or athletics;”
- Seek to continue work in their field of expertise in the United States; and
- Through their work, would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act. The term “extraordinary ability” means expertise commensurate with “one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

Evidence must initially demonstrate a noncitizen's receipt of either "a major, international recognized award" or satisfaction of at least three of ten lesser evidentiary criteria. 8 C.F.R. § 204.5(h)(3)(i-x).<sup>1</sup> If a petitioner meets either standard, USCIS must then make a final merits determination as to whether the record, as a whole, establishes sustained national or international acclaim and recognized achievements placing them among the small percentage at their field's very top. *Amin v. Mayorkas*, 24 F.4th 383, 391 (5th Cir. 2022) (holding that USCIS' two-step analysis "is consistent with the governing statute and regulation");<sup>2</sup> see generally 6 USCIS Policy Manual F.(2)(B), [www.uscis.gov/policy-manual](http://www.uscis.gov/policy-manual).

## II. ANALYSIS

### A. Facts and Procedural History

The record shows that the Petitioner, a Ghanaian national and citizen, earned a bachelor of fine arts degree in ceramics in his home country in 2010. For about the next nine years, he worked for the Ghanaian university that issued his degree as both a principal technician and research assistant. As a principal technician, he oversaw all technical work in the school's ceramic arts department.

In 2019, the Petitioner obtained a student visa to study for a master of fine arts (MFA) degree in the United States. He later graduated as his school's valedictorian. His ceramic artwork has garnered awards, and he has exhibited his work at various U.S. galleries. The Petitioner stated: "My artistry has wonderstruck experts in my field and captured the attention of the public due to my usage of mixed media materials that are not at all associated with ceramics." The record shows his work contains traditional materials from his Ghanaian heritage, including [REDACTED]

[REDACTED] But some of his pieces also include non-typical, modern materials such as nuts and bolts. The Petitioner stated: "The purposeful way the [REDACTED] is incorporated into my work (checkered, striped, jig sawed, or woven) and the histories associated with the [REDACTED] combine to effectively communicate the complexities of the [African] diaspora: separation, fear, rejection, love, nostalgia, racism, and appropriation."

The Petitioner now works as a U.S. university lecturer, teaching classes in art appreciation, design, and ceramics. He states his intention to continue working in the ceramic arts field in this country. "Since I am one of the very few people who are breaking conceptual and material boundaries [in the field]," he states, "my continued employment in the U.S. will position the country at the forefront of [ceramic] industry advancement and innovation."

The record does not show – nor does the Petitioner claim – his receipt of a major, internationally recognized award. He therefore has to meet at least three of the ten initial evidentiary requirements. See 8 C.F.R. § 204.5(h)(3)(i-x). The record supports the Director's findings that the Petitioner met four evidentiary criteria regarding:

- Published materials about him and his work in his field;

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<sup>1</sup> If an evidentiary standard does not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

<sup>2</sup> The U.S. Court of Appeals for the Fifth Circuit has jurisdiction over the Petitioner's residence.

- His participation as a judge of others' work in the field;
- His authorship of scholarly articles in the field; and
- The display of his work at artistic exhibitions or showcases.

*See* 8 C.F.R. § 204.5(h)(3)(iii), (iv), (vi), (vii).

On appeal, the Petitioner contends that he meets three other evidentiary criteria. But, because he satisfied the requisite three requirements, we need not consider whether he meets more. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make “purely advisory findings” on issues unnecessary to their ultimate decisions).

We will next review the Director's final merits determination.

## B. The Final Merits Determination

To establish extraordinary ability, a petitioner must demonstrate that they have sustained national or international acclaim and that their achievements have been recognized in their field, identifying them as one of that small percentage who has risen to the field's very top. *See generally* 6 *USCIS Policy Manual* F.(2)(B). A petition's approval or denial should stem from the evidence's type and quality. *Id.*

When determining final eligibility, USCIS should consider the petition in its entirety, weighing all evidence in the totality. *Id.* The Agency should consider any potentially relevant evidence of record, even if it does not fit one of the regulatory criteria or does not serve as comparable evidence. *Id.*

The Director acknowledged the Petitioner as “recognized” in his field. But the Director found insufficient evidence of acclaim and recognition placing him among the small percentage at the field's very top.

On appeal, the Petitioner contends that the Director misanalysed his case. As previously indicated, USCIS uses a two-step analysis when determining extraordinary ability. USCIS first determines whether a petitioner's proof objectively meets the parameters of at least three evidentiary requirements. *See* 8 C.F.R. § 204.5(h)(3). If so, the Agency then conducts a final merits determination, ascertaining whether the record, as a whole, demonstrates a petitioner's sustained acclaim and recognition for achievements commensurate with one of that small percentage who has risen to their field's very top. *See Amin*, 24 F.4th at 391; *see generally* 6 *USCIS Policy Manual* F.(2)(B).

The Petitioner argues that the Director's final merits determination “conflated” the two adjudicatory steps. He contends that, when considering his claimed extraordinary ability, the Director required evidence in each regulatory criterion to demonstrate the requisite amounts of acclaim and recognition. *See Eguchi v. Kelly*, No. 3:16-CV-1286-D, 2017 WL 2902667, \*3 (N.D. Tex. July 7, 2017) (“[USCIS] . . . may not conflate the final merits question of whether the petitioner has reached the very top of his field of endeavor (and thus is an alien of extraordinary ability) with the procedural question of whether the petitioner has sufficiently submitted three types of evidence.”)

But we do not interpret the Director's decision as combining the two adjudicatory steps. As the Petitioner argues, the Director's final merits decision discusses his claimed extraordinary ability by evidentiary criteria. For example, the decision finds that evidence of his membership in various ceramic arts organizations under 8 C.F.R. § 204.5(3)(ii) does not reflect sufficient acclaim or recognition in his field to demonstrate extraordinary ability. The decision continues to assess the Petitioner's purported extraordinary ability by reviewing evidence under each criterion, including proof of: published materials about him under 8 C.F.R. § 204.5(h)(3)(iii); his participation as a judge of others' work under 8 C.F.R. § 204.5(h)(3)(iv); etc.

The Director's decision, however, does not expressly require each evidentiary criterion to reflect extraordinary ability. Rather, the decision merely uses the requirements to structure the evidence's review. *See Amin*, 24 F.4th at 394 (affirming USCIS' denial of an extraordinary ability petition after "[t]he agency looked at each of the criteria [the petitioner] satisfied and explained why his accomplishments under each merited little weight in the overall assessment").

We agree with the Petitioner, however, that the Director overlooked evidence of his acclaim and recognition in his field. The Director's decision states: "Neither does the record establish that other professionals in the [Petitioner]'s field have relied on [his] works, such as by having widely implemented [his] technique in their own work." The Petitioner, in fact, submitted evidence that other artists have adopted his techniques. A letter from an art collector/former gallery owner states that three artists "have adopted [the Petitioner]'s approach to pay tribute to their respective ethnicities to tell a story of diaspora." The Petitioner submitted copies of photographs of these artists' work and information about them. Also, a letter from another contemporary art collector cites a fourth emerging artist that the Petitioner purportedly influenced. Further, the Director did not discuss letters from art professors and others in the field asserting the Petitioner's extraordinary ability.

A review of the overlooked evidence, however, does not demonstrate the Petitioner's claimed extraordinary ability in his field. *See Amin*, 24 F.4th 394 ("[W]e will not reverse an agency action due to a mistake where that mistake 'clearly had no bearing on ... the substance of the decision reached.'") (citations omitted); *see generally Matter of O-R-E-*, 28 I&N Dec. 330, 350 n.5 (BIA 2021) (citing cases of harmless or scrivener's errors). As indicated above, the record identifies four artists who adopted the Petitioner's techniques. But the record does not establish that number, or the artists themselves, as significant in the field.

Also, the letters on the Petitioner's behalf fall short of placing him at the field's very top. Most of the letters' authors have ties to universities where he has studied or taught, and the art collectors who provided statements have purchased some of his works. The record lacks sufficient independent, objective evidence demonstrating the Petitioner's claimed extraordinary ability. *See 6 USCIS Policy Manual* F.(2)(B)(3) ("It is generally expected that one whose accomplishments have garnered sustained national or international acclaim would have received recognition for their accomplishments well beyond the circle of their personal and professional acquaintances.")

Some of the letters also qualify their praise for the Petitioner. The executive director of an international ceramic arts organization stated that the group gave the Petitioner a multicultural fellowship award. The executive director said: "*For a young artist*, like [the Petitioner], being selected is an impressive feat due to the competitive nature of the selection process." (emphasis added). Also, the director of

the U.S. art school that awarded the Petitioner his MFA described him as “a *rising star* in the field of ceramics.” (emphasis added). These letters suggest that the Petitioner is extraordinary when compared to other young artists in his field or artists in early stages of their careers. But the letters do not establish his place at the field’s very top. *See* 8 C.F.R. § 204.5(h)(2) (defining the term “extraordinary ability”).

After reviewing the entire record – including materials regarding the three additional evidentiary criteria the Petitioner claims to have met – we do not find that he has demonstrated his claimed extraordinary ability in his field.

The Petitioner is a distinguished ceramic artist. In time, he may prove to have extraordinary ability in his field. For the foregoing reasons, however, he has not demonstrated sufficient acclaim and recognition placing him among the small percentage at the field’s very top. *See Amin*, 24 F.4th at 386 (“[G]iven the lofty bar for extraordinary ability classifications, we cannot say that the agency acted arbitrarily when it determined that [a petitioner] was not ‘extraordinary’ but merely very good.”)

### III. CONCLUSION

After reviewing all the evidence in the aggregate, the record does not demonstrate the Petitioner’s claimed extraordinary ability in his field.

**ORDER:** The appeal is dismissed.